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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216429
Party	Defendant NextLine Manufacturing, Inc.
Correspondence Address	NEXTLINE MANUFACTURING, INC. NEXTLINE MANUFACTURING, INC. 7951 CESSNA AVE GAITHERSBURG, MD 20879-4117 ljohnson@nextlinemfg.com
Submission	Motion to Dismiss - Rule 12(b)
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Date	07/28/2014
Attachments	Reply Brief.pdf(19940 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Proto Labs, Inc.,)	
)	Opposition No. 91216429
Opposer,)	
)	Serial Nos. 86/100,092, 86/100,112,
v.)	86/100,123 and 86/100,133
)	
NextLine Manufacturing Corp.,)	Marks: NextLine, NextLine
)	Manufacturing, NextQuote
Applicant.)	Xpress Flow

**APPLICANT’S REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS**

Opposer’s response brief fails to address the fundamental issue raised in Opposer’s motion to dismiss, namely, the deficiency of Opposer’s “shotgun” allegations, none of which is rectified by the amended notice of opposition tendered by Opposer with its response to Applicant’s motion. Opposer appears to believe that the large number of pages and pleaded paragraphs in the amended notice equates to a coherent statement of Opposer’s claim. This deficiency is merely exacerbated on page page one of Opposer’s response brief, which lays out four (4) counts, thereby doubling the number of counts purportedly alleged in the original notice of opposition.

I. Conflicting Marks

Opposer states, “As a competitor with six conflicting marks, Proto Labs has amply pleaded standing.” However, Applicant did not challenge Opposer’s standing. Nevertheless, to narrow the issues before the Board, Applicant is filing herewith a Consent to Judgment on **NextQuote**, U.S. App. Ser. No. 86/100,123, and **XPressFlow**, U.S. App. No. 86/100,133, leaving only the following two applications to be adjudicated by the Board: **NextLine**, U.S. App. No. 86100092; and **NextLine Manufacturing**, U.S. App. No. 86100112.

II. Multiple Counts

Opposer states, “there is no requirement that Proto Labs plead four grounds against each of four marks as twelve separate counts.” However, Applicant never proposed any such requirement. The statement itself shows Opposer’s failure to failure to apprehend the basis for Applicant’s motion to dismiss.

III. Averment of Intent

Opposer states, “Proto labs has pleaded fraud with particularity, and intent may be averred.” Applicant agrees that intent may be *inferred* where the circumstances alleged by the opposer are sufficient to support an inference of intent. In the present case, however, no such circumstances are alleged.

In fact, there are errors in the first-use and first-use-in-commerce dates, and such dates, to be correct, must be amended as follows:

Mark/App.	First Use	Corrected	First Commerce	Corrected
NextLine , App. No. 86100092	Jan. 15, 2013	May 29, 2013	Oct. 22, 2013	Jan. 28, 2014
NextLine Manufacturing , App. No. 86100112	Jan. 15, 2013	May 29, 2013	Oct. 22, 2013	Jan. 28, 2014

These errata in the first-use dates, while regrettable, are not merely innocent; they are insufficient, as a matter of law, to raise an inference that Applicant had an intent to deceive the U.S. Patent and Trademark Office. In comparison to Opposer’s claims of common law priority, which go back for many years, these discrepancies cannot form the basis for an inference of fraudulent intent.

IV. Priority

Finally, Opposer states, “Details of ownership are evidentiary matters for proof, not for pleading.” Opposer’s asserted acquisition of priority in the name “FINELINE” is hardly a mere “detail of ownership.” And, even if that were true, the degree of resemblance between

FINELINE and NEXTLINE is insufficient, as a matter of law, to support a finding of likely confusion for purposes of Section 2(d) of the Lanham Act.

In summary, none of the points raised by Opposer in its response brief address the issues raised in Applicant's motion to dismiss, and the amended notice of opposition filed by Opposer does not fix the problem. For this reason, the opposition should be dismissed.

Respectfully submitted,

NEXTLINE MANUFACTURING INC.



by:

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Date: July 28, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 28, 2014, a copy of the foregoing Reply Brief in Support of Motion to Dismiss was served by U.S. mail, first class postage prepaid, on the following counsel of record for Opposer:

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